

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

AUG 20 2007

JOHN E. CORCORAN, CLERK
BY: *[Signature]*
DEPUTY CLERK

STEPHEN A. GILES,)	CASE NO. 3:03CV00007
)	
Plaintiff,)	
)	
v.)	<u>REPORT AND RECOMMENDATION</u>
)	
MICHAEL J. ASTRUE ¹ ,)	By: B. Waugh Crigler
Commissioner of Social Security,)	U. S. Magistrate Judge
)	
Defendant.)	
)	

Before the undersigned, under authority of 28 U.S.C. § 636(b)(1)(B), is the July 30, 2007 motion for an award of attorney fees filed by C. Cooper Geraty, Esq., under 42 U.S.C. § 406(b), seeking approval of a contingent fee for his successful representation of plaintiff. Counsel for plaintiff seeks an award of \$11,650.25 representing 25% of plaintiff's past-due benefits withheld as set forth in a Notice of Award issued to the plaintiff, or \$20,312.75, reduced by the amount counsel already has been awarded by the Social Security Administration in the amount of \$5,300.00. Counsel also has represented that he will remit to the plaintiff the sum of \$3,362.50 heretofore awarded under the EAJA once he receives the fee approved by the court, in the end netting an award of \$11,650.25.

The Commissioner does not object to an award which accounts for remittance by counsel to his client of the EAJA fees already paid. He consents to an award to plaintiff's counsel in the amount of \$15,012.75 so long as the court's award directs counsel to remit to

¹On February 12, 2007, Michael J. Astrue became the Commissioner of Social Security. In accordance with Rule 25(d)(1) of the Federal Rules of Civil Procedure, he should be substituted for Jo Anne B. Barnhart, Commissioner of Social Security, as the defendant.

plaintiff the sum of \$3,362.50, leaving \$11,650.25 as the net balance to counsel.

Finding that the fee requested is reasonable under *Gisbrecht v. Barnhart*, 535 U.S. 789, 122 S.Ct. 1817 (2002), and that the Commissioner does not oppose the award sought by plaintiff's counsel in this case, it is RECOMMENDED that the presiding District Judge enter an order awarding counsel a contingent fee under 42 U.S.C. § 406 in the amount of \$15,012.75 (representing the total withheld benefits of \$20,312.75 less the \$5,300.00 paid for administratively) with direction to plaintiff's counsel that, upon receipt thereof he forthwith is to remit to his client the sum of \$3,362.50 representing the sum paid by the Commissioner under the EAJA.

The Clerk is directed to immediately transmit the record in this case to the presiding District Judge. Both sides are reminded that pursuant to Rule 72(b) they are entitled to note objections, if any they may have, to this Report and Recommendation within (10) days hereof. Any adjudication of fact or conclusion of law rendered herein by the undersigned not specifically objected to within the period prescribed by law may become conclusive upon the parties. Failure to file specific objections pursuant to 28 U.S.C. § 636(b)(1)(C) as to factual recitations or findings as well as to the conclusions reached by the undersigned may be construed by any reviewing court as a waiver of such objection. The Clerk is directed to send a certified copy of this Report and Recommendation to all counsel of record.

ENTERED:


U.S. Magistrate Judge

Aug 20, 2007
Date